United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLEE

76-1330

To be argued by
PETER A. CLARK

B
P/S

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 76-1330

UNITED STATES OF AMERICA,
Appellee,

—v.—

GLEN WALTER ALEXANDER DE LA MOTTE,
Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

BRIEF FOR THE APPELLEE

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UNITED STATES COURT OF APPEALS
OCT 16 1975
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

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United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 76-1330

UNITED STATES OF AMERICA,

Appellee,

—v.—

GLEN WALTER ALEXANDER DE LA MOTTE,

Appellant.

BRIEF FOR THE APPELLEE

Statement of the Case

This is an appeal from an order of the District Court (Zampano, J.) denying Appellant's motion for a new trial pursuant to Rule 33 F.R.C.P. and 28 U.S.C. § 2255. Appellant was convicted in the District of Connecticut on April 16, 1969 (Timbers, J.) of Interstate Transportation of a kidnaped person [18 U.S.C. 1201(a)] and Interstate Transportation of a stolen motor vehicle [18 U.S.C. 2312], and was sentenced on May 12, 1969 to concurrent terms, respectively, of thirty and five years. The convictions were affirmed on November 10, 1970. *United States* v. *Glen Walter Alexander De La Motte*, 434 Fed. 289 (2d Cir. 1970), and certiorari was denied on February 2, 1971, *Glen De La Motte* v. *United States*, 401 U.S. 921 (1971).

On March 22, 1971, Appellant filed a pro se motion for a new trial on the grounds of newly discovered evi-

dence pursuant to Rule 33 F.R.C.P. and an Order to Show Cause was issued on June 25, 1971. Counsel was appointed on October 1, 1971. On November 2, 1971, Appellant filed a motion to have his new trial motion granted without hearing. This was denied on January 4, 1972, and evidentiary hearings were held on June 14, 1972 and March 6, 1973. Appellant filed his brief on the new trial motion on August 8, 1975, at which time he expanded his grounds in a substituted new trial motion, claiming under 28 U.S.C. § 2255 that erroneous jury instructions denied him due process and that his indictment was impermissibly based entirely on hearsay. The substituted motion was denied in all respects on June 1, 1976.

Statute Involved

Rule 33, Federal Rules of Criminal Procedure

New Trial

The Court on motion of a defendant may grant a new trial to him if required in the interests of justice. . . . A motion for a new trial based on the ground of newly discovered evidence may be made only before or within two years after final judgment. . . .

28 U.S.C. § 2255

Federal custody; remedies on motion attacking sentence.

A prisoner in custody . . . claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States . . . or is otherwise subject to collateral attack, may move the Court which imposed the sentence to vacate, set aside, or correct the sentence. . . . if the Court finds

that . . . there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the Court shall . . . grant a new trial or correct the sentence as may appear appropriate.

Questions Presented

I. Whether the denial of the motion for new trial on the basis of newly discovered evidence was clearly erroneous.

   A. Troglen Evidence

   B. Jackson Post Trial Evidence

II. Whether the District Court was clearly erroneous in denying Appellant's motion for a new trial based on his claims under 28 U.S.C. § 2255.

   A. Whether the claims made by Appellant can be raised under 28 U.S.C. § 2255 when the alleged errors all were a matter of record at the trial and were not raised on direct appeal.

   B. Whether, assuming arguendo the District Court could consider Appellant's claims under 28 U.S.C. 2255, it was clearly erroneous to find no merit in these claims.

      1. Whether the District Court's finding that the trial Court's technical error in instructing the jury that the Court of Appeals must fix bond for Jackson did not prejudice Appellant was clearly erroneous.

      2. Whether the District Court's finding that there had been no showing that the grand jury was misled by hearsay was clearly erroneous.

Statement of Facts

The facts underlying De La Motte's conviction are succinctly summarized in the decision on his original appeal, *United States* v. *Glen Walter Alexander De La Motte, supra.* Essentially, the Government established that on September 2, 1966, Appellant, Charles Jackson, and John Walsh hijacked a truck load of razor blades in Milford, Connecticut. De La Motte drove the stolen truck to New York to dispose of the load while Walsh and Jackson took the driver to New Jersey, where they tied him to a tree in a wooded area. He escaped shortly thereafter and reported the theft. The Government's case against De La Motte consisted primarily of the testimony of Jackson, who had previously been convicted for his role in the affair and whose conviction was then on appeal. Jackson was in custody through the De La Motte trial, but was released on a personal appearance bond pending appeal one week after its conclusion. During Jackson's testimony at trial the prosecutor elicited testimony that he had been promised bond pending appeal. The Court instructed the jury that bond was a matter for the Court to decide, and mistakenly stated that it was the Court of Appeals that would set bond for Jackson since he had filed an appeal.

Jackson's appeal was not diligently prosecuted and was finally dismissed on February 10, 1972 upon motion of the Government, however no notice was received by the United States Attorney's Office (Tr. 6/14/72 p. 8-9). The Government became aware of Jackson's liberty status on the morning of the first hearing in this matter (Tr. 6/14/72 p. 9). He could not be located and eventually a bench warrant was issued on April 13, 1973, which was lodged as a detainer on April 27, 1973 in the Eastern District of New York where Jackson was confined on

intervening state charges.[1] Appellant presented no evidence that Jackson's fortuitous avoidance of incarceration on his Federal sentence was in any way a result of promises or accommodations made by the Government.

With regard to the "new evidence" claimed by De La Motte, he presented several witnesses at the two hearings. John David Troglen, a Federal prisoner then serving a sentence for possession of stolen bank funds and with previous convictions for armed robbery, assault with intent to murder, breaking and entering and grand larceny (Tr. 6/14/72 p. 16) testified that he, rather than De La Motte, had played the role ascribed to the latter in the instant hijacking. Troglen claimed to have met another inmate named Walters in Atlanta and in the course of general conversation about their past exploits, he told Walters that he had hijacked the truck of razor blades. Walters responded that De La Motte had been convicted for that crime. (Tr. 6/14/72 p. 24-25) Troglen and Walters were subsequently transferred to Marion, where they met De La Motte. Troglen offered to come forward and help De La Motte (Tr. 6/14/72 p. 26), and he thereafter executed an affidavit relating his participation in the hijacking (Tr. 6/14/72 p. 17-18) which affidavit was annexed to De La Motte's new trial motion. Troglen also testified in sketchy detail about his role in the hijacking (Tr. 6/14/72 p. 20-23), claiming to have participated with De La Motte's original co-defendants, Jackson and Walsh.

The Government countered these assertions by introducing hospital records bearing Troglen's signature show-

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[1] Appellant's brief (p. 19) states that Jackson's rap sheet shows he was arrested on March 11, 1974. This apparently is the date of conviction for the earlier arrest, however, since the docket entries reflect that the bench warrant was lodged as a detainer in April, 1973.

ing that he was in Rochester, New York at about 4:15 A.M. on the day of the hijacking, admitting his wife to the hospital for the birth of their child (Tr. 6/14/72 p. 132-134). The records also show that the child was born at 6:50 A.M. (Tr. 6/14/72 p. 134), an event which Troglen acknowledged he had been present for (Tr. 6/14/72 p. 63). He also testified, however, that he arrived in New York City at 6:00 A.M. that date to meet his accomplices and then proceed to New Jersey before coming to Connecticut (Tr. 6/14/72 p. 29, 42). In addition Troglen's wife testified that he had taken her to the hospital in the early morning hours and that he visited with her there late in the morning and mid-afternoon, all the day of the hijacking (Tr. 6/14/72 p. 149-153).

As part of the Troglen new evidence, De La Motte also called his co-defendant Walsh, who had written a letter to De La Motte asserting the latter's innocence and had made statements to that effect to Appellant's investigators and to at least one other inmate (Tr. 4/16/72 p. 76).[2] Under oath, however, Walsh testified that the out-of-court statements were false and that De La Motte had indeed participated in the hijacking with he and Jackson. (Tr. 6/14/72 p. 75) Walsh's actual testimony was in accord with his original statement on the matter made shortly after his arrest in 1966 (Tr. 6/14/72 p. 96).

In addition to De La Motte's personal denial of guilt (Tr. 6/14/72 p. 112-118), the final aspect of the new evidence claim was the testimony of Patrick O'Shea, serving sentences for bank robbery and armed assault to commit murder (Tr. 3/6/73 p. 194), to the effect that he had received the load of stolen razor blades and that Troglen was driving the truck.

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[2] Thomas Skinner, the investigator (Tr. 6/14/72 p. 101-103) and Armando Sacassus, an inmate (Tr. 6/14/72 p. 105), testified about Walsh's statements to them exonerating De La Motte.

The District Court, after weighing the evidence, found the testimony of Troglen and O'Shea "unworthy of belief" in view of their behavior and demeanor on the stand, Walsh's actual testimony, and the Government's rebuttal evidence (app. 3a). Judge Zampano found that the hospital records and Mrs. Troglen's testimony "irrefutably established that Troglen was in Rochester at the times he claimed he was in New Jersey and Connecticut planning and executing the crimes in question" (app. 3a). The Court further found that *no* evidence had been produced of an undisclosed promise of post trial release to Jackson in return for his testimony, and therefore, rejected in all aspects the bid for a new trial on the basis of newly discovered evidence. The Court also ruled adversely to Appellant as a matter of law on his claims under 28 U.S.C. § 2255.

ARGUMENTS

I

A. The Troglen evidence was clearly a concocted sham, and properly rejected by the District Court as a basis for a new trial.

In considering a motion for a new trial under Rule 33 F.R.C.P, the District Court, in the exercise of its discretion, must determine whether there is a showing 1) that the evidence could not with due diligence have been discovered until after the trial; 2) that the evidence is material to the factual issues at the trial and not merely cumulative or impeaching; and 3) that the evidence would probably prevent a different result in the event of retrial . . . [citations omitted] *United States* v. *Zane*, 507 F.2d 346 (2d Cir. 1974), *cert. denied*, 421 U.S. 910 (1975); See also *United States* v. *Slutsky*, 514 F.2d 1222 (2d Cir.

1975); *United States* v. *Polisi*, 416 F.2d 573 (2d Cir. 1969). The question for the Court of Appeals is whether the trial judge has applied these criteria and whether his finding that the application of those criteria required a denial of the motion is or is not clearly erroneous.[3] *United States* v. *Zane*, *supra*, 347-348.

There is no question that the District Court employed the proper criteria, which it set out verbatim in its ruling denying Appellants motion to grant his new trial motion without hearing (Appellee's Supplemental Appendix). To narrow the issue further, the Government conceded below and concedes here that, without reference to the quality of the claimed new evidence, it meets criteria one and two. The only remaining question is whether the District Court's ruling that the totally unbelievable Troglen evidence failed to form a basis for a new trial was clearly erroneous.

To provide a foundation for a new trial, the new evidence must be credible. If the District Court in the exercise of its discretion, with a sound basis therefore, rejects the new evidence as totally incredible the motion automatically fails, *United States* v. *Maddox*, 444 F.2d 148 (2d Cir. 1971); *United States* v. *Schoepflin*, 442 F.2d 407 (9th Cir. 1971). The latter case is almost identical to the facts here, that is the "true robber" was allegedly discovered by the convicted man in jail. Quite logically, incredible evidence is not evidence at all.

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[3] It has been suggested that an even stricter standard applies on Rule 33 motions. In *United States* v. *Pfingst*, 490 F.2d 262, Fn. 11 at 273 (2d Cir. 1973) the Court stated that findings of fact by the District Court will not be disturbed unless wholly unsupported by evidence. Appellee asserts that there is no basis for reversal of the District Court here under either standard.

In assessing credibility, the District Court has wide discretion. *United States* v. *Maddox, supra.* He has the best vantage point for making this determination, *United States* v. *Bermundez*, 526 F.2d 89 (2d Cir. 1975), primarily because he has the opportunity to observe the demeanor and behavior of the witnesses, a factor of "major moment", *Sostre* v. *Festa*, 513 F.2d 1313, 1317 (2d Cir.), *cert. denied*, 96 S. Ct. 72 (1975). Judge Zampano found that the demeanor and behavior of De La Motte's witnesses, without more, created "grave doubts" about their credibility. (App. 3a) Furthermore, Judge Zampano found that the Government's rebuttal evidence "irrefutably" placed Troglen far from the scene of the crime which he claimed to have participated in. In addition, then, to the total lack of credibility of Appellant's evidence, there is ample affirmative evidence in the record to expose Appellant's efforts for what they really are, a shoddy attempt to manufacture new evidence. The District Court quite properly rejected this ploy.

B. The Jackson Post Trial new evidence is not evidence at all, but merely reckless and unfounded speculation.

Appellant urges this Court to accept upon "inference" from Jackson's post trial liberty the wholly unsupported proposition that there was prosecutorial misconduct in failing to disclose a promise to him that such liberty would flow from his testimony. Not only was no factual basis for this claim laid below, there was not even an attempt made, such as subpoenaing the Assistant United States Attorney that prosecuted De La Motte and dealt with Jackson. Judge Zampano found that Appellant failed to elicit *any* evidence of an undisclosed reward (App. 3a). In the face of this finding below and a record barren of even a hint of support for Appellant's accusation, it is

charitable to characterize his argument as merely devoid of merit. It is somewhat audacious to petition this Court to find a District Judge clearly erroneous in declining to draw an inference with no evidentiary foundation upon which it could be based. In view of the lack of evidence, the District Court's rejection of this ground for a new trial was the only result that could be reached, and should therefore not be disturbed.

II

A. None of the alleged trial errors raised under 28 U.S.C. § 2255 amounted to fundamental defects inherently resulting in a complete miscarriage of justice, and cannot therefore be raised under that section after having been bypassed on appeal.

After Appellant's trial, he exercised his full appellate rights, during the course of which none of the errors now raised were claimed. See *United States* v. *De La Motte*, *supra*. Section 2255 cannot be used as a substitute for or supplement to an appeal. *Sunal* v. *Large*, 332 U.S. 174 (1974). The writ may only correct fundamental errors resulting in a complete miscarriage of justice. *Davis* v. *United States*, 417 U.S. 333, 346 (1974); *Hill* v. *United States*, 368 U.S. 424, 428 (1962); *United States* v. *Wright*, 524 F.2d 1100 (2d Cir. 1975). With respect to a jury instruction, the error, if any, must have deprived Appellant of a fair trial in a constitutional sense. *Joe* v. *United States*, 510 F.2d 1038 (10th Cir. 1975); *Egger* v. *United States*, 509 F.2d 745 (9th Cir. 1975). Appellant's argument that the erroneous instruction regarding which Court had authority to grant Jackson bond amounts at best to a claim of tactical disadvantage, in that his efforts to impeach Jackson would somehow have been enhanced if the jury knew the District Court could grant him bail

pending appeal. This is a somewhat anemic interpretation of what constitutes a fundamental miscarriage of justice.

With regard to the use of hearsay before the grand jury, once again the degree of error, if any, does not permit use of 28 U.S.C. § 2255 at this stage. First, as a result of pre-trial motion, counsel had access to the "yellow sheets" kept by the grand jury in lieu of a transcript, since no stenographer was present (docket entries, Supp. App.). No issue was raised at trial or on appeal with respect to the grand jury. Second, hearsay is not constitutionally prohibited at a grand jury, *United States* v. *Costello*, 350 U.S. 359 (1956). Even where an indictment was dismissed in this Circuit for misuse of hearsay, *United States* v. *Esteppa*, 471 F.2d 1132 (2d Cir. 1972), it was done so under the exercise of supervisory power rather than as a result of constitutional error. For these reasons, the District Court need not have even entertained this claim under 28 U.S.C. § 2255.

B. Assuming arguendo that the District Court was required to entertain the merits of Appellant's 2255 claims, Appellant was in no event prejudiced by the highly technical misstatement to the jury that only the Court of Appeals could set bond for Jackson.

During Jackson's direct testimony in the De La Motte trial, the prosecutor elicited testimony that Jackson had been promised that he would be released on bond during the pendancy of his own appeal. The Court, sua sponte, interrupted to advise the jury that bond was solely a question for the Court and that since an appeal had been filed it was the exclusive province of the Court of Appeals to fix Jackson's bond. Even if it is assumed that this instruction was incorrect as a matter of law, Judge

Zampano's finding that Appellant was not prejudiced thereby is manifestly sound.[4] The prosecutor's promise, for whatever impeachment value it may have had, was fully disclosed. The highly technical distinction between what Court could make that promise a reality would surely have had no impact on a jury of laymen in terms of their assessment of the witnesses credibility. Furthermore, it had no bearing on the jury's ability to apply the law to the facts, as in a charge, which is the essence of the jury function. It was purely a collateral matter of truly insignificant proportion, hardly the grievous error upon which a fatal attack under 28 U.S.C. § 2255 is founded. The District Court properly rejected this nit-picking out of hand.

C. Appellant failed to demonstrate that the grand jury which indicted him was fatally misled by the use of hearsay.

Under *Esteppa*, *supra*, it must be demonstrated not only that excessive hearsay was employed by the grand jury, but also that the grand jury was misled thereby. The District Court concluded no such showing had been made. Appellant now asks this Court to presume the latter element because the grand jury minutes cannot be located. Even if by a process of deduction it can reasonably be assumed that hearsay was presented to the jury, no degree of speculation can validly establish that the grand jury was misled. Since *Esteppa*, *supra*, enunciated an essentially prophylactic rule to deter future shortcomings in grand jury practice, it would stretch that rule

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[4] The standard for appellate review of findings of fact made on a motion under 28 U.S.C. 2255 is also whether or not the District Judge was clearly erroneous. *United States* v. *Pfingst*, *supra*.

far beyond its intended effect to look back at a grand jury that sat ten years ago and presume an essential ingredient of *Esteppa*. As indicated in *United States* v. *Bertolotti*, 529 F.2d 149 (2d Cir. 1975), indictments valid on their face are not subject to challenge on the basis of the quality of evidence presented to the grand jury, and, while the Court has supervisory power to dismiss indictments in certain instances, it is submitted that those supervisory powers should not be employed to create a presumption of irregularity which has not been proved. Furthermore, even if the presumption is made, the wisdom of using a presumed irregularity of non-constitutional dimensions to grant a motion which requires proof of a fundamental defect amounting to a miscarriage of justice is highly dubious. The showing necessary under *Esteppa* has not been made, and the District Court finding to that effect is not clearly erroneous.

CONCLUSION

For all of the foregoing reasons, the District Court's denial of Appellant's motion for a new trial was soundly based on evidence and law, was not therefore clearly erroneous, and should be affirmed.

Respectfully submitted,

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District of Connecticut.

APPENDIX

Ruling on defendant's motion for a new trial without an evidentiary hearing

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

Criminal No. 11829

UNITED STATES OF AMERICA

v.

GLENN WALTER ALEXANDER DELAMOTTE

On April 16, 1969, the defendant DeLaMotte was convicted after a jury trial of kidnapping, 18 U.S.C. § 1201 (a), and interstate transportation of a stolen motor vehicle, 18 U.S.C. § 2312. The court, William H. Timbers, *J.*, now Circuit Court Judge, sentenced him to a term of imprisonment for 30 years. The Second Circuit affirmed the convictions, 434 F.2d 289 (2 Cir. 1970), and the Supreme Court denied certiorari, 401 U.S. 921 (1971).

The charges against DeLaMotte grew out of a truck hijacking by three men in 1966. It is conceded that at trial the only evidence implicating DeLaMotte in the hijacking was the testimony of Charles Jackson, a participant in the crime. A second participant, John Walsh, declined to testify on Fifth Amendment grounds. The driver of the truck never saw the third hijacker, allegedly DeLaMotte.

DeLaMotte now moves for a new trial on the ground of newly discovered evidence, which matter was referred to this Court by Judge Timbers. In support of his motion,

Ruling on defendant's motion for a new trial without an evidentiary hearing

DeLaMotte has filed three documents: 1) an affidavit of one John David Troglen, confessing that he and not DeLaMotte was the third hijacker; 2) a letter to DeLaMotte from Wa h, asserting the former's innocence; and 3) an affidavit of one Armando Sacasas, stating that Walsh had told him DeLaMotte was not involved in the crime.

The essentials for a new trial are:

> (1) the evidence must have been discovered since the trial; (2) it must be material to the factual issues at the trial, and not merely cumulative nor impeaching the character or credit of a witness; (3) it must be of such a nature that it would probably produce a different verdict in the event of a retrial. *United States* v. *Polisi*, 416 F.2d 573, 576-77 (2 Cir. 1969).

While not entirely clear at this time, it appears that the proffered evidence meets the first two requirements. However, it is not possible at this time to judge whether it meets the third requirement. Were a new trial granted the affidavits and the letter alone would be insufficient; the testimony of their authors would be necessary. Furthermore, that testimony would have to be credible, *United States* v. *Maddox*, 444 F.2d 148, 152 (2 Cir. 1971). The Court is in no position to weigh the credibility of the proposed trial testimony on the basis of the documents submitted, even assuming that such testimony will be forthcoming and will agree with those documents. In similar circumstances courts have usually held hearings in order to evaluate the proposed testimony. See *Maddox*, *supra; United States* v. *Lawrenson*, 314 F.2d 612, 613

Ruling on defendant's motion for a new trial without an evidentiary hearing

(4 Cir. 1963); *Baca* v. *United States*, 312 F.2d 510 (10 Cir. 1962), cert. denied, 373 U.S. 952 (1963); *DeBinder* v. *United States*, 303 F.2d 203 (D.C.Cir. 1962).

Defendant seeks to distinguish these cases principally on the ground that in the instant case the new evidence has been sworn to, suggesting that the penalties for perjury are sufficient to render the affidavits credible on their face. However, in the cases cited it was for the most part not the lack of an oath but the circumstances of the making of the statements which cast doubt on their credibility. See also *Newman* v. *United States*, 238 F.2d 861, 862 n.1 (5 Cir. 1956); *Evans* v. *United States*, 122 F.2d 461, 469 (10 Cir. 1941), cert. denied, 314 U.S. 698 (1942). The Court cannot conclude from the prima facie fact of attestation that the evidence is thereby rendered sufficiently credible to warrant a new trial, without more.

Accordingly, it is

ORDERED, that the motion to grant a new trial without an evidentiary hearing be, and the same hereby is, denied; and it is further

ORDERED, that an evidentiary hearing be scheduled by the Clerk of this Court at New Haven; and it is further

ORDERED, that the defendant's motion for writs of habeas corpus ad testificandum and ad prosequendum be, and the same hereby are, granted; and it is further

ORDERED, that the defendant's motion for appointment of an investigator be, and the same hereby is, granted, subject to filing of the appropriate form.

Dated at New Haven, Connecticut, this 24th day of January, 1972.

ROBERT C. ZAMPANO
United States District Judge

Docket Entries

U.S. vs. Jackson, De La Motte and Walsh — Page 2

Criminal No. 11,829

Date	*Proceedings*
11/23	—Defendant Walsh's Memorandum on Motions Filed, filed. (Sent to Judge Timbers)
11/23	—Appearance of Steven Duke, Esq., Yale Law School, entered for defendant JACKSON.
11/28	—Defendant Walsh's Motion to Strike; To Dismiss Indictment; For Bill of Particulars etc. (8 motions for Walsh) and 7 Jackson Motions continued one week. Time of hearing to be worked out with counsel. Defendant DeLa-Motte & his attorney to be summoned by U.S. Attorney in one week from today. Adoption of all arguments made by co-defendants. Filed by Attorney Grudberg. Motion for Change of Venue, filed by Attorney Grudberg. (Timbers, J.) m-11/28/66.
12/2	—Motion For Admission of Visiting Lawyer, filed by Robert J. Ashkins
12/5	—Endorsements filed on motion heard at Bridgeport. Jackson's Motion For Bill of Particulars: "12/5/66—Ordered that supplemental Bill of Particulars be served and filed not later than 12/12/66. (Timbers, J.)." Jackson's Motion For List of Witnesses and Venireman:
Endors. m-12/6/66	"12/5/66—Motion granted by consent; ordered —that lists of witnesses and venireman be filed and copies furnished to counsel not later than

Docket Entries

Date	*Proceedings*
	14 days before trial. Timbers, J.". Jackson's Motion For Discovery and Inspection: "12/5/66—Motion granted; compliance ordered not later than 12/19/66. (Timbers, J.)". DeLaMotte Motion for Admission of Visiting Lawyer: "12/5/66—Motion granted; Mr. Stein, upon filing an appearance, may appear for all purposes in this case on behalf of defendant DeLamotte. Timbers, J." Walsh Motion For Bill of Particulars: 12/5/66—Motion granted in all respects; government ordered to serve and file its Bill of Particulars not later than 12/12/66. Timbers, J." Walsh Motion For Production of a List of Veniremen Witnesses: "12/5/66—Motion granted by consent; ordered that lists of witnesses and veniremen be filed and copies furnished to counsel not later than 14 days before trial. Timbers, J.". Walsh Motion For Discovery and Inspection: "12/5/66—Motion granted by consent; compliance ordered not later than 12/19/66. Timbers, J." Walsh—Motion To Have Grand Jury Minutes Transcribed: "12/5/66. Motion denied, Government having advised Court that no stenographer was present. The Clerk of this Court is ordered to unseal and disclose to counsel, 14 days before trial, the yellow sheet or sheets comprising the Grand Jury minutes, after which they are ordered re-impounded. Timbers, J."
12/5	—Hearing held on Walsh Motion to Strike—DECISION RESERVED. Walsh Motion To Dismiss Indictment—DECISION RESERVED. Walsh Motion For Bill of Particulars—Granted by consent. Govt. to file suppl. Bill of Part.

Docket Entries

Date	*Proceedings*
	by 12/12/66. Jackson Motion To Suppress Evidence—OFF—Court will determine when hearing will be held. Jackson Motion for Change of Venue—DECISION RESERVED. Jackson Motion for Bill of Particulars—Granted by consent. Govt. to file supp. Bill of Part. by 12/12/66. Jackson Motion for List of Witnesses and Veniremen—Granted, compliance 14 days in advance of trial. Jackson Motion to Dismiss Indictment—DECISION RESERVED. Walsh Motion For Prod. of a List of Venireman Witnesses—Granted, compliance 14 days in advance of trial. Walsh Motion For Production Of All Evidence Favorable To The Defendant—Denied, without prejudice to be reclaimed by defendant at a later stage. Walsh Motion To Have Grand Jury Minutes Transcribed—Minutes be unimpounded and disclosed 14 days in advance of Trial. Minutes should not be disclosed to anyone other than defendants' and counsel. Walsh Moiton For Discovery & Inspection—Granted by consent compliance by 12/19/66. Walsh Motion For Severance—DECISION RESERVED. Jackson Motion for Discovery and Inspection—Granted by consent compliance by 12/19/66. Jackson Motion to Strike—DECISION RESERVED. WALSH Motion For Change of Venue—DECISION RESERVED. (Timbers, J.) m-12/6/66.
12/5	—Motion For Admission of Arnold M. Stine, Visiting Lawyer—GRANTED. Memorandum in Opposition to Defendant Jackson's Motion

Docket Entries

Date	*Proceedings*
	to Dismiss Indictment, filed. Appearance of Arnold M. Stein of 76 Broadway, Denville, New Jersey filed for Defendant DeLaMotte. Appearance of Raymond A. Brown, 26 Journal Square, Jersey City, New Jersey filed for Defendant DeLaMotte. Motion of Def. DeLaMotte to Reduce Bail with notice of Motion, filed.—DENIED. Defendant DeLaMotte joins in motions heard today when applicable. Defendant to file written motion to that effect which will be granted by the Court. (OVER)
	Bridgeport, Connecticut 06601 Counsel for defendant Glenn Walter Alexander De La Motte

★ U. S. Government Printing Office 1976— 714—020—300

United States Court of Appeals
FOR THE SECOND CIRCUIT

No. 76-1330

UNITED STATES OF AMERICA
Appellee

v.

GLEN WALTER ALEXANDER De La Motte
Appellant

76-1330

AFFIDAVIT OF SERVICE BY MAIL

Salvatore Schillace, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 418 Duggan Hill Ave Staten Island, N.Y.

That on the 18th day of October, 1976, deponent served the within Brief for the Appellee upon Alfred J. Jennings, Jr., Zeldes, Needle & Cooper 333 States Street, Bridgeport, Connecticut

Attorney(s) for the Appellee in the action, the address designated by said attorney(s) for the purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in a post office official depository under the exclusive care and custody of the United States Post Office department within the State of New York.

Salvatore Schillace

Sworn to before me,

This 18th day of October, 1976

Pierre L. Hard

PIERRE L. HARD
Notary Public, State of New York
No. 24-4504294
Qualified in Kings County
Commission Expires March 30, 1977